

REMARKS

In a first Office Action dated December 5, 2003 (paper no. 5), the Examiner rejected claims 1-4 under 35 U.S.C. §102(e) as being anticipated by Heikkinen et al. (WO 200041431, hereinafter referred to as "Heikkinen"). The rejections are traversed and reconsideration is hereby respectfully requested.

Claim 1 has been amended to provide for determining whether to convey a data package in a backhaul frame based on a decoding metric and, in response to determining to not convey the data package in the frame, controlling, in a base station transceiver, a header for a packet frame to be communicated between the base station transceiver and the network controller wherein a portion of the header identifies the frame as one containing no data package. Nowhere are these limitations taught by Heikkinen.

Heikkinen teaches a base station that receives a frame from a mobile station. An uplink judging means of the base station judges a quality of the received frame. When the quality of the received frame falls below the predetermined threshold, the base station tags the frame with a flag indicating that the data is of unacceptable quality and forwards the frame, including the defective data and the flag, to a radio network controller.

The teachings of Heikkinen pose the very problem solved by the teachings of claim 1. That is, Heikkinen backhauls received data regardless of whether the data is defective. This does nothing to alleviate potential backhaul loading problems when a system is operating near capacity. By contrast, claim 1 teaches load reduction by determining whether to backhaul received information and, in response to determining not to backhaul the information, conveying a frame without a data package and a header indicating that that the frame is not intended to include the data package. This is not taught by Heikkinen. Accordingly, the applicants respectfully request that claim 1 may now be passed to allowance.

Since claims 2-5 depend upon allowable claim 1, the applicants respectfully request that claims 2-5 may now be passed to allowance.

As the applicants have overcome all substantive rejections given by the Examiner and has complied with all requests properly presented by the Examiner, the applicants contend that this Amendment, with the above discussion, overcomes the Examiner's objections to and rejections of the pending claims. Therefore, the applicants respectfully solicit allowance of the application. If the Examiner is of the opinion that any issues regarding the status of the claims remain after this response, the Examiner is invited to contact the undersigned representative to expedite resolution of the matter.

Respectfully submitted,
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